

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION**

**BOBBY NEIL MCFALLS**

**PLAINTIFF**

**v.**

**No. 2:05CV82-D-A**

**WARDEN TOMMY TAYLOR, ET AL.**

**DEFENDANTS**

**MEMORANDUM OPINION**

This matter comes before the court on the plaintiff's December 30, 2005, motion for a temporary restraining order or preliminary injunction. The plaintiff alleges that various defendants have retaliated against him for filing the instant lawsuit by restricting his phone calls and letters to and from Joan Coker. For the reasons set forth below, the instant motion shall be denied.

**Discussion**

A party must prove four elements to be entitled to preliminary injunctive relief: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction is not issued; (3) that the threatened injury to the movant outweighs any harm that may result from the injunction to the non-movant; and (4) that the injunction will not disserve the public interest. *DSC Communications Corp. v. DGI Technologies, Inc.*, 81 F.3d 597, 600 (5<sup>th</sup> Cir. 1996); *Rodriguez v. United States*, 66 F.3d 95, 97 (5<sup>th</sup> Cir. 1995), *cert. denied*, 116 S. Ct. 1058, 134 L. Ed. 2d 202 (1996); *Cherokee Pump & Equipment, Inc. v. Aurora Pump*, 38 F.3d 246, 249 (5<sup>th</sup> Cir. 1994). A preliminary injunction is an extraordinary remedy. *Cherokee Pump*, 38 F.3d at 249. It is "not to be granted routinely, but only when the movant, by a clear showing, carries [the] burden of persuasion." *Black Fire Fighters Association v. City of Dallas*, 905 F.2d

63, 65 (5<sup>th</sup> Cir. 1990) (quoting *Holland American Insurance Co. v. Succession of Roy*, 777 F.2d 992, 997 (5<sup>th</sup> Cir. 1985)); *Cherokee Pump*, 38 F.3d at 249 (quoting *Mississippi Power & Light v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5<sup>th</sup> Cir. 1985)).

The plaintiff is unable to demonstrate a substantial likelihood of success on the merits in light of his argument as framed in the instant motion. First, he has not alleged why he believes the defendants' actions have been taken in retaliation rather than for a legitimate purpose. Further, the plaintiff has not shown how the defendants' alleged actions would cause him irreparable harm without a temporary restraining order. Under these circumstances, the court finds that in order for the plaintiff to bring these claims in federal court, he must exhaust them through the Mississippi Department of Corrections Administrative Remedy Program and then bring a separate suit.

As such, the instant motion for a temporary restraining order or preliminary injunction is hereby **DENIED**. A judgment consistent with this memorandum opinion shall issue today.

**SO ORDERED**, this the 31st day of January, 2006.

/s/ Glen H. Davidson  
CHIEF JUDGE